FLORIDA ADVISORY COUNCIL ON INTERGOVERNMENTAL RELATIONS

REPORT-IN-BRIEF

Florida's Review of Developments of Regional Impact: An Overview

The following questions are posed and answered:

1. In general, how is a Development of Regional Impact review described and what is its purpose?
2. What is a Development-of-Regional Impact (DRI)?
3. What are the major procedural requirements in a DRI review?
4. What have been the major amendments to the DRI review process since 1972?
5. What is required in order for a local government to be certified to conduct a DRI review?
6. What is the relevant DRI case law?
7. How many DRI development orders have been issued in the past 5 years ?
8. What are the statutorily authorized fees in a DRI review?
9. What can be appealed in the DRI review process?
10. What is the relationship between the Local Government Comprehensive Planning and Land Development Regulation Act and the review of a DRI?

ACIR, October 1992 **DRI Report**

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(As of September, 1992)

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If you would like additional copies of this Supplemental Report or if you have comments or questions pertaining to the information contained herein, please contact the ACIR at (904)488-9627 or Suncom 278-9627. We welcome your input or suggestions. Our mailing address is:

ACIR
c/o House Office Building
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Florida's Review of Developments of Regional Impact: An Overview[1]

The objective in this Report-in-Brief is to acquaint the reader with key aspects of Florida's review of developments of regional impact(DRI). This is accomplished by addressing and answering the questions that appear on the front cover of the report by referring primarily to statutory provisions.[2] Included in this overview are important statutory definitions, statutory procedural requirements, statutorily permitted variations or exemptions, and a brief summary of relevant case law. In addition, the number of approved DRIs by regional planning agency or region during the past 5 years are presented in Table I. The report concludes with an explanation of the relevant fees authorized by statute and administrative rule.

In general, how is a Development of Regional Impact review described and what is its purpose?

Enacted as a component of the Environmental Land and Water Management Act of 1972, the development of regional impact (DRI) review process was viewed as an approach to preserve Florida's natural resources while managing development. General descriptions of the process provide some insight into its intent. These descriptions of the process have varied in emphasis and tenor. One early description referred to the DRI as a "decision making tool for local governments which provides that state and regional concerns will be considered when significant land use decisions are made at the local government level."[3] A more recent reflection on the original intent of the DRI provisions stated "development per se is not discouraged; rather, it is channelled so that its impacts upon the environment and preexisting infrastructure systems are controlled and rendered less severe."[4] While consideration of state and regional concerns is ensured in the development of regional impact review, descriptions of the process often stress that local governments maintain the final authority in the approval of such a development.[5]

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[1] This report was prepared with the assistance of staff for the Department of Community Affairs, regional planning councils, and the third Environmental Land Management Study Committee. However, ACIR staff assume primary responsibility for the report's content.

[2] However, it should be recognized that throughout the DRI review process, an understanding of the relevant rules, implementation of which is authorized in s. 380.06(23), F.S., could be essential.

[3] Thomas, Joseph M. and George Griffith. 1974. DRI. Florida Environmental and Urban Issues. (Volume 1, No. 5):1.

[4] Partington, Bruce D. 1990. Frith Revisited: Practice and Procedure Under Florida's Development of Regional Impact Statutes. Journal of Land Use and Environmental Law (Vol 6: 107):108.

[5] In early descriptions of the development of regional impact process, this "local government" control was considered consistent with the home rule powers provided for local governments in the Florida Constitution and confirmed in statutory law.

An understanding of the purpose of the DRI also stems from evaluations of the land development regulatory process prior to the enactment of the DRI review. The following quote is one such evaluation:

> A major deficiency in the land development regulatory process in Florida prior to the Management Act (which created the DRI process) was its failure to provide local decision-makers with adequate findings so as to assure consideration of extraterritorial impact - whether beneficial or detrimental. To many, the process was undemocratic. Although considering local cost and benefit, it often ignored the decision's effect on the total citizenry. Hence, it failed to recognize that a citizen may significantly suffer or benefit from the impact of decisions to site an airport, grant a large scale subdivision permit, construct a regional shopping center, or authorize a major mining operation, made not by his community, but by the municipality located downstream or across the road. Yet neither the citizen, nor the public officials he elected, may be able to influence these decisions.
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> Additionally, the land use decision-making process often encouraged developers of large scale projects to obtain concept approval without giving local decision-makers sufficient data to indicate, even generally, the probable fiscal, environmental and social impacts of the development on the community.[6]

Based on several descriptions of and insights into the DRI process, it appears that the intent was to require a process that involved all three levels of government for the purpose of conducting in-depth reviews of developments with greater-than-local impacts that would mitigate adverse impacts and ensure compliance with local, regional, and state policy objectives.

What is a Development of Regional Impact?

The statutory definition of development of regional impact(DRI) is "any development which, because of its character, magnitude, or location, would have a substantial effect upon the health, safety, or welfare of citizens of more than one county."[7] This broad definition is implemented using the specific guidelines and standards approved initially by the Governor and Cabinet and Legislature in 1973.[8] The guidelines and standards in section 380.0651(3), F.S., which refer to types of land uses, are used with percentage thresholds specified in section 380.06(2), F.S. to determine which developments must undergo a DRI review. Presented in summary form, the list of land uses in the guidelines and standards

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[6] Rhodes, Robert M. 1975. DRI's and Florida's Land Development Policies. Florida Environmental and Urban Issues. (Volume 11, No. 3):5.

[7] Section 380.06(1), F.S.

[8] Section 380.0651, F.S.

in section 380.0651(3), F.S. are as follows:[9]

(a) Airports.--
1. New commercial service or general aviation airport with paved runways; new commercial service or general aviation paved runway; new passenger terminal facility;
2. expansion of an existing runway or terminal facility by 25% or more on a commercial service airport or a general aviation airport with regularly scheduled flights shall be presumed to be a development of regional impact.

(b) Attractions and recreation facilities.--Any sports, entertainment, amusement, or recreation facility including, but not limited to, a sports arena, stadium, racetrack, tourist attraction, amusement park, or pari-mutuel facility, the construction or expansion of which:
1. For single performance facilities:
    a. Provides parking spaces for more than 2,500 cars; or
    b. Provides more than 10,000 permanent seats for spectators.
2. For serial performance facilities;
    a. Provides parking spaces for more than 1,000 cars; or
    b. Provides more than 4,000 permanent seats for spectators.

(c) Industrial plants, industrial parks, and distribution, warehousing or wholesaling facilities.--Any proposed industrial, manufacturing, or processing plant, or distribution, warehousing, or wholesaling facility excluding wholesaling developments which deal primarily with the general public onsite, under common ownership, or any proposed industrial, manufacturing, or processing activity or distribution, warehousing, or wholesaling activity, excluding wholesaling activities which deal primarily with the general public onsite, which:
1. Provides for more than 2,500 motor vehicles, or
2. Occupies a site greater than 320 acres.

(d) Office development.--Any proposed office building or park operated under common ownership, development plan, or management that:
1. Encompasses 300,000 or more square feet of gross floor area; or
2. Has a total site size of 30 or more acres; or
3. Encompasses more than 600,000 square feet of gross floor area in a county with a population greater than 500,000 and only in a geographic area specifically designated as highly suitable for increased threshold intensity in the approved local comprehensive plan and in the comprehensive regional policy plan.

(e) Port facilities.--The proposed construction of any waterport or marina is required to undergo development-of-regional-impact review, except one designed for:
1.a. The wet storage or mooring of fewer than 150 watercraft used exclusively for sport, pleasure, or commercial fishing, or
b. The dry storage of fewer than 200 watercraft and exclusively for sport, pleasure, or commercial fishing; or
c. The wet or dry storage or mooring of fewer than 400 watercraft used exclusively for sport, pleasure, or commercial fishing with all necessary approvals pursuant to chapters 253, 373, and 403 and located outside Outstanding Florida Waters and Class II waters. The Department of Natural Resources must determine in writing that the marina is located so that it will not adversely impact Outstanding Florida Waters or Class II Waters and will not contribute boat traffic in a manner that will have an adverse

[9] Additional guidelines and standards appear in administrative rule, Chapter 28-24, Florida Administrative Code, for hospitals, mining activity, petroleum storage facilities and schools.

impact on an area known to be, or likely to be frequented by manatees. [10]
2. The dry storage of fewer than 300 watercraft and exclusively for sport, pleasure, or commercial fishing at a marina constructed and in operation prior to July 1, 1985.
3. Any proposed marina development with both wet and dry mooring or storage used exclusively for sport, pleasure, or commercial fishing, where the sum of percentages of the applicable wet and dry mooring or storage thresholds equals 100 percent. This threshold is in addition to, and does not preclude, a development from being required to undergo development-of-regional-impact review under sub-subparagraphs 1.a. and 1.b. and subparagraph 2.

(f) Retail and service development.--Any proposed retail, service, or wholesale business establishment or group of establishments which deals primarily with the general public onsite, operated under one common property ownership, development plan, or management that:
1. Encompasses more than 400,000 square feet of gross area;
2. Occupies more than 40 acres of land; or
3. Provides parking spaces for more than 2,500 cars.

(g) Hotel or motel development.--
1. Any proposed hotel or motel development that is planned to create or accommodate 350 or more units; or
2. Any proposed hotel or motel development that is planned to create or accommodate 750 or more units, in a county with a population greater than 500,000, and only in a geographic area specifically designated as highly suitable for increased threshold intensity in the approved local comprehensive plan and in the comprehensive regional policy plan.

(h) Recreational vehicle development.--Any proposed recreational vehicle development planned to create or accommodate 500 or more spaces.

(i) Residential development.-- No rule may be adopted concerning residential developments which treats a residential development in one county as being located in a less populated adjacent county unless more than 25 percent of the development is located within 2 or less miles of the less populated adjacent county. (Actual Thresholds in a rule.)

When the percentage thresholds in section 380.06(2), F.S. are applied to the numerical guidelines and standards in section 380.0651(3), F.S., the "bands" used to determine if a development must undergo a review are as follows[11]:

Single Land Use Developments

Fixed Thresholds:
At or below 80%, not required to undergo DRI review.
At or above 120%, required to undergo DRI review.

Rebuttable Presumptions(Thresholds):
Between 80% and 100%, presumed to require DRI review.
At 100% or between 100% and 120%, presumed to require DRI review.

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[10] The Department of Natural Resources determination shall constitute final agency action pursuant to Chapter 120.

[11] The application of the "bands" was authorized in 1985. Prior to that time, a development that was below 100% of the numerical guidelines and standards was presumed to not be a DRI.

Multi-use Developments (s. 380.0651(3)i, F.S.)

According to the statutory provisions referring to multi-use developments, a DRI is designated when the sum of the percentages for the numerical thresholds for each of two land uses is equal to or greater than 145% and the sum of the percentages for the numerical thresholds for each of three or more land uses (one of which is residential and contains at least 100 dwelling units or 15% of the applicable residential threshold, whichever is greater) is equal to or greater than 160%.

Applying this statutory requirement to a development in which there are only two land uses, as an example, the thresholds in section 380.06(2) or "bands" are as follows:

Fixed Thresholds:
Sum of percentages at or below 116%, not required to undergo DRI.
Sum of percentages at or above 174%, required to undergo DRI review.

Rebuttable Presumptions (Thresholds):
Sum of percentages between 116% and 145%, presumed not to require DRI review.
Sum of percentages at 145% or between 145% and 174%, presumed to require DRI review.

The numerical thresholds of any statewide guideline or standard may be increased or decreased by a petition of the local government, state land planning agency, or regional planning agency. After a petition has been filed, the state land planning agency has 180 days to prepare and submit to the Administration Commission a report and recommendations on the proposed variation. This report must consider several criteria relevant to the local government's comprehensive plan and land development regulations. The regional planning agency, the local government, and adjoining local governments may submit recommendations to the Administration Commission regarding the proposed variations. The Administration Commission may not increase or decrease a threshold more than 50%. However, any such revision shall not become effective unless approved by general law.

While the list of the thresholds that classify a development as a development of regional impact is extensive and relatively specific, there is also an extensive list of statutory exemptions to the development of regional impact review (s. 380.06(24), F.S.). These exemptions are the following:

(a) Any proposed hospital which has a designed capacity of not more than 100 beds is exempt from the provisions of this section.
(b) Any proposed electrical transmission line or electrical power plant is exempt from the provisions of this section, except any steam or solar electrical generating facility of less than 50 megawatts in capacity attached to a development of regional impact.

(c) Any proposed addition to an existing sports facility complex is exempt from the provisions of this section if the addition meets the following characteristics:
1. It would not operate concurrently with the scheduled hours of operation of the existing facility.
2. Its seating capacity would be no more than 75 percent of the capacity of the existing facility.
3. The sports facility complex property is owned by a public body prior to July 1, 1983.

This exemption does not apply to any pari-mutuel facility.

(d) Any proposed addition or cumulative additions subsequent to July 1, 1988, to an existing sports facility complex owned by a state university is exempt if the increased seating capacity of the complex is no more than 30 percent of the capacity of the existing facility.

(e) Any addition of permanent seats or parking spaces completely constructed prior to July 1, 1989, for a sports facility located on property owned by a public body prior to July 1, 1973, is exempt from the provisions of this section if those additions did not expand existing permanent seating or parking capacity more than 15 percent annually in excess of the prior year's capacity.

(f) Any increases in the seating capacity of an existing sports facility having a permanent seating capacity of at least 50,000 spectators is exempt from the provisions of this section, provided that such an increase does not increase permanent seating capacity by more than 5 percent per year and not to exceed a total of 10 percent in any 5-year period, and provided that the sports facility notifies the appropriate local government within which the facility is located of the increase at least 6 months prior to the initial use of the increased seating in order to permit the appropriate local government to develop a traffic management plan for the traffic generated by the increase. Any traffic management plan shall be consistent with the local comprehensive plan, the regional policy plan, and the state comprehensive plan.

(g) Any expansion in the permanent seating capacity or additional improved parking facilities of an existing sports facility is exempt from the provisions of this section, if the following conditions exist:
1.a. The sports facility had a permanent seating capacity on January 1, 1991, of at least 41,000 spectator seats;
b. The sum of such expansions in permanent seating capacity does not exceed a total of 10 percent in any 5-year period and does not exceed a cumulative total of 20 percent for any such expansions; or
c. The increase in additional improved parking facilities is a one-time addition and does not exceed 3,500 parking spaces serving the sports facility; and
2. The local government having jurisdiction of the sports facility includes in the development order or development permit approving such expansion under this paragraph a finding of fact that the proposed expansion is consistent with the transportation, water, sewer and stormwater drainage provisions of the approved local comprehensive plan and local land development regulations relating to those provisions.[12]

[12]Relying on this statute requires the owner or developer to provide the department a copy of the local government application for a development permit. Within 45 days, the department shall render an advisory or nonbinding opinion stating whether the prescribed conditions exist for an exemption. After the local government renders the development order approving the expansion, the owner, developer, or department may appeal the development order.

The statutes also authorize the aggregation of separate developments for treatment as a single or unified development of regional impact.[13] In addition to meeting the requirement that the developments are "physically proximate,"[14] they must be part of a "unified plan of development". Two of the following criteria must be met, in order for the state land planning agency to determine that there is a "unified plan of development":

1a. The same person has retained or shared control of the developments;
b. The same person has ownership or a significant legal or equitable interest in the developments;
c. There is common management of the developments controlling the form of physical development or disposition of parcels of the development;
2. There is reasonable closeness in time between the completion of 80% or less of one development and the submission to a governmental agency of a master plan or series of plans or drawings for the other development;
3. A master plan or series of plans or drawings exists covering the development sought to be aggregated which have been submitted to local general purpose government, water management district, and specified state agencies;
4. There is a voluntary sharing of infrastructure that is indicative of a common development effort or is designated specifically to accommodate the developments sought to be aggregated;
5. There is a common advertising scheme.

In addition, the statutes specify activities and circumstances under which aggregation is not permitted or applicable.

What are the major procedural requirements in a DRI review?[15]

Procedurally, the review of developments of regional impact is complex and multifaceted. The statutes require several procedural steps for the review and authorize the developer to request clarification on the development's status and a variety of alternative procedures. While the state land planning agency is required to perform or monitor many of the requirements associated with a DRI review, the regional planning agency assumes the lead responsibility in DRI review implementation. Local governments may perform an active role in a development of regional impact review, and the local government issues the final development order for approving a DRI, ensuring involvement of three layers of government in the development of regional impact process. The first DRI procedures explained here are those considered the minimum or "regular" requirements for a DRI review. Second, several procedures that authorize optional agreements, alternatives, and requests for clarification are covered.

The governmental entities that must perform a function or take an action for each

[13] Section 380.0651(4), F.S., which expires October 1, 1993, and is scheduled for review by the Legislature.

[14] A definition of "physically proximate" appears in Chapter 9J-2.0275, Florida Administrative Code.

[15] Throughout this section, a "regional planning agency" is a regional planning council and the "state land planning agency" is the Department of Community Affairs.

procedure or procedural step highlighted here are displayed in Figure I.

Minimum or "Regular" Procedural Requirements in a DRI Review

The procedural steps included in this section are considered the core or minimum requirements that a developer and governmental entities must adhere to in a development of regional impact review. These procedural steps must occur in the sequence presented here over a time period that can be extended from several months to several years, certainly beyond the minimum time constraints in the statutes. Substantial deviations and changes to DRI development orders are discussed as a final procedural step even though all DRIs do not have such deviations. Figure II illustrates the sequence of the procedural steps and time frames explained below.

Preapplication Conference (section 380.06(7), F.S.)

A developer must contact the regional planning agency to arrange a preapplication conference prior to submitting an application for development approval. Other state and regional planning agencies must participate in this conference upon the request of the regional planning council or the developer. Officials from governmental entities must identify the "types of permits issued by the agencies, the level of information required, and the permit issuance procedures as applied to the proposed development." During the preapplication conference, it is the regional planning council's responsibility to provide the developer with information about the DRI process and promote a proper and efficient review of the proposed development. In the statute, the regional planning agency is required to establish by rule a procedure that allows a developer to enter into a binding agreement with the regional planning agency for the purpose of eliminating unnecessary questions from the application for development approval. Relevant Rule: Chapter 9J-2.021, F.A.C.

Application Sufficiency (section 380.06(10), F.S.)

An application for development approval must be submitted to a local government, regional planning agency and state land planning agency. The regional planning agency determines if the application is sufficient. Insufficiency of an application requires the regional planning agency to notify the local government and the developer in writing of the additional information desired within 30 days. The developer may provide the information requested and shall notify the regional planning agency and local government in writing of his intent. Within 30 days of receiving additional information, the regional planning agency may request additional information directly related to that provided by the developer in response to the first request for additional information. Relevant Rule: Chapter 9J-2.022, F.A.C.

FIGURE I
PARTICIPATION OF GOVERNMENTAL ENTITIES IN DEVELOPMENT OF REGIONAL IMPACT REVIEW
(Relevant notes appear at the end of the Figure)

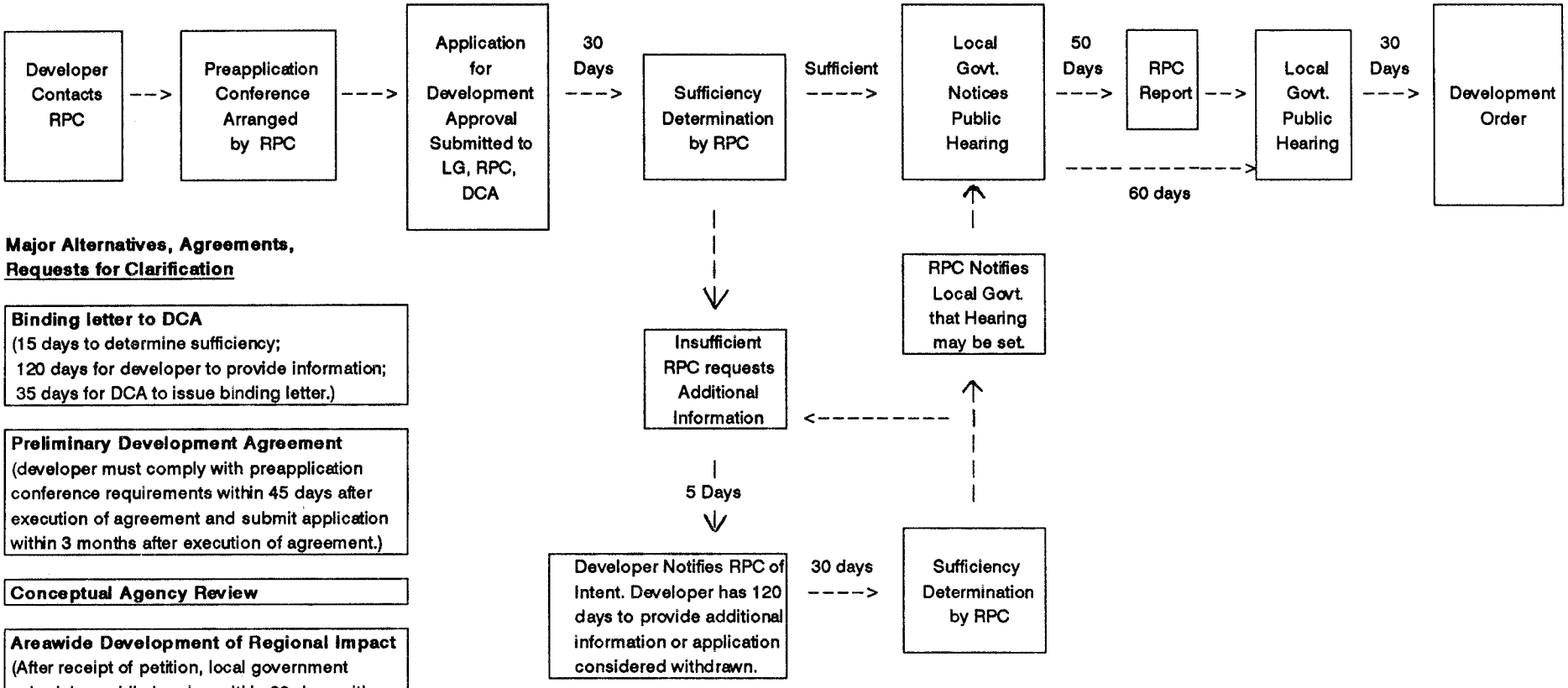
Minimum Procedural Requirements	State Land Planning Agency	Regional Planning Agency	Local Government	Adjoining Local Government	Other Regional Agencies	Other State Agencies
Preapplication Conference	Upon request, participates	Arranges, participates	Upon request, participates+	Upon request, participates+	Upon request, participates	Upon request, participates
Application for Development Approval (ADA)	receives	receives	receives	receives+	receives+	receives+
Application Sufficiency	receives+	determines	receives	receives+	receives+	receives+
Local Government Notice of Public Hearing	receives	receives	notices	If appropriate, receives	If appropriate, receives	If appropriate, receives
Regional Report	Upon request, reviews and prepares comments	prepares comments	receives		Upon request, reviews and prepares comments	Upon request, reviews and prepares comments
Issuance of Development Order	receives copy	receives copy	issues			
Appeals to Development Order	may appeal	may appeal				
Monitoring of Development Order	receives annual report	receives annual report	primary responsibility for enforcement, receives annual report		If appropriate, receives annual report	If appropriate, receives annual report
Substantial Deviation Determination	receives request for approval, review change	receives request for approval, review change	receives request for approval, notice and schedule public hearing, issues amendment to D.O.			

FIGURE I (continued)

Request for Clarification	State Land Planning Agency	Regional Planning Agency	Local Government	Adjoining Local Government	Other Regional Agencies	Other State Agencies
Binding Letter**	may request, must prepare	reviews+	may request	may request DCA to request	upon request, reviews+	upon request, reviews+
Alternative Procedures						
Preliminary Development Agreement*	executes agreement	sometimes a party in agreement+	sometimes a party in agreement+			
Conceptual Agency Review*	participates	participates			participates	participates
Comprehensive Application Master Plan Dev. Order*	similar to participation specified for the minimum procedural steps	party to agreement	party to agreement			
Areawide DRI*	similar to participation specified for the minimum procedural steps.					
Downtown DRI*	similar to participation specified for the minimum procedural steps					
Florida Quality Development*	receives and reviews ADA, Issues DO	receives and reviews ADA may appeal DO	receives and reviews ADA approves DO	Upon request, participates+	Upon request, participates	Upon request, participates
	review time limits as set forth in s. 120.06, F.S.					

*Optional for developer
**Optional for developer unless requested by state land planning agency or other governmental entity.
+Administrative Code or reflects actual implementation.

Figure II
Sequence of Procedural Steps and Time Frames In Development of Regional Impact Review



Major Alternatives, Agreements, Requests for Clarification

Binding letter to DCA
(15 days to determine sufficiency;
120 days for developer to provide information;
35 days for DCA to issue binding letter.)

Preliminary Development Agreement
(developer must comply with preapplication conference requirements within 45 days after execution of agreement and submit application within 3 months after execution of agreement.)

Conceptual Agency Review

Areawide Development of Regional Impact
(After receipt of petition, local government schedules public hearing within 60 days with 30 day notice.
Local government order approving petition must be distributed to specified parties within 30 days after order becomes effective.)

Comprehensive Application; Master Plan

Substantial Deviations
(Between 30 and 45 days after submission of request for change, local government must notice and schedule public hearing.)

Florida Quality Development
Review time frame consistent with s. 120.60, F.S.

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Local Government Notice of Public Hearing (section 380.06(11), F.S.)

Upon receipt of the notification from the regional planning agency that the application is sufficient or that the developer will not provide further information, the local government will give notice of a public hearing on the application for development approval. The notice shall be published at least 60 days before the hearing and must specify where the information and reports on the development of regional impact application may be reviewed. The state land planning agency, the applicable regional planning agency, appropriate regional and state permitting agencies, and other persons designated by the state land planning agency shall receive the notice of the local government public hearing. Relevant Rule: Chapter 9J-2.023, F.A.C.

Regional Report (section 380.06 (12), F.S.)

Within 50 days of receiving a notice of a local government public hearing on a development of regional impact approval, the regional planning agency for the region in which the local government is located shall "prepare and submit to the local government a report and recommendations on the regional impact of the proposed development." The report and recommendations shall "identify regional issues based upon the following review criteria and make recommendations to the local government on these regional issues, specifically considering whether and the extent to which:

1. The development will have a favorable or unfavorable impact on the environment and natural and historical resources of the region.
2. The development will have a favorable or unfavorable impact on the economy of the region.
3. The development will efficiently use or unduly burden water, sewer, solid waste disposal, or other necessary facilities.
4. The development will efficiently use or unduly burden public transportation facilities.
5. The development will favorably or adversely affect the ability of people to find adequate housing reasonably accessible to their places of employment.
6. The development complies with such other criteria for determining regional impact as the regional planning agency deems appropriate, including, but not limited to, the extent to which the development would create an additional demand for, or additional use of, energy, provided such criteria and related policies have been adopted by the regional planning agency pursuant to s. 120.54, F.S."[16]

The regional planning agency may request other appropriate agencies to review and prepare reports and recommendations on issues in the jurisdiction of those agencies. If reports and recommendations are submitted by other agencies, they must become a part of the regional report. However, the statute authorizes the regional planning agency to attach "dissenting views". An exception to the authorization for dissenting views refers to cases in which water management district and Department of Environmental Regulation permits have been

[16] The statutory criteria for the regional report also states that the regional planning agencies may "review and comment upon issues which affect only the local government entity with jurisdiction pursuant to this section." The relevant statutes continue stating that "such issues shall not be grounds for or be included as issues in a regional planning agency appeal of a development order under s. 380.07, F.S."

issued pursuant to Chapters 373 and 403. The regional planning agency may comment on the "regional implications of the permits but may not offer conflicting recommendations." The statute also requires the regional planning agency to afford the developer or any substantially affected party "reasonable opportunity to present evidence to the regional planning agency head relating to the proposed regional agency report and recommendations". Relevant Rule: Chapter 9J-2.024, F.A.C.

Local Government Development Order (section 380.06(15), F.S.)

Unless the developer requests an extension, within 30 days of the public hearing, the local government must render a decision on the application for development approval. The development order must include "findings of fact and conclusions of law consistent with subsections (13) and (14)" which refer to criteria for evaluating the development in areas of critical state concern and outside areas of critical state concern. In addition, a development order shall:

1. Specify the monitoring procedures and the local official responsible for assuring compliance by the developer with the development order.
2. Establish compliance dates, including a deadline for commencing physical development and a termination date that "reasonably reflects the time required to complete the development."
3. Establish a date until which the local government agrees that the approved development shall not be subject to down-zoning, unit density reduction, or intensity reduction, unless the local government can demonstrate otherwise in accordance with the statutory requirements.
4. Specify the requirements for the annual report submitted by the developer.
5. Include legal description of the property.

In addition, the development order may specify the types of changes to the development that will require submission for a substantial deviation. Conditions in a development order that require a developer to contribute land for a public facility or construct, expand, or pay for land acquisition or construction or expansion of a public facility must meet criteria specified in the statutes. The statutes prohibit a local government from approving a development of regional impact that does not make adequate provision for the public facilities needed to accommodate the impacts of the proposed development. In cases where the local government has committed to provide the needed infrastructure, the statutes state that a local government's failure to meet the commitment shall not preclude the issuance of a development order when adequate public facilities are provided by the developer. Relevant Rule: Chapter 9J-2.025, F.A.C.[17]

Local Monitoring and Annual Reports (sections 380.06(17) and 380.06(18), F.S.)

According to the statute, the local government issuing the development order is "primarily responsible for monitoring the development and enforcing the provisions of the

[17] This rule, in particular, was identified by officials familiar with the DRI review process as noteworthy. The primary reason eluded to was a provision in Chapter 9J-2.025(3), F.A.C. which requires a finding of consistency with the State Comprehensive Plan and the State Land Development Plan.

development order." Annual reports must be submitted by the developer to the local government, regional planning agency, state land planning agency, and "all affected permit agencies." If the developer fails to submit the annual report, the local government shall request it. Failure to submit the report within 30 days after said request by the local government must result in a temporary suspension of the development order for the DRI.

Substantial Deviations (section 380.06(19), F.S.)

Further development of regional impact review is required if there is "any proposed change to a previously approved development which creates a reasonable likelihood of additional regional impact, or any type of regional impact created by the change not previously reviewed by the regional planning agency." These changes are labelled substantial deviations and are determined using a list of criteria in the statutes. If a development change exceeds, either individually or cumulatively with other changes, the criteria, it is a substantial deviation. An extension of the date of buildout of a development, or any phase in a development, by 5 or more years is "presumed to create" a substantial deviation subject to further development of regional impact review.[18]

When a proposed change to a development of regional impact is anticipated, a developer is required to submit to the local government, regional planning agency, and the state land planning agency a request for approval of the proposed change. Within 30 days subsequent to the submission of this request, the proposed change is reviewed by the state land planning agency, the regional planning agency, and the local government. Between 30 and 45 days of receipt of the proposed change, the local government sets a public hearing date for the purpose of making the determination of whether the change constitutes a substantial deviation. If the change is determined by the local government not to be a substantial deviation, the local government must decide whether to approve the change and issue an amendment to the development order. If the change is determined by the local government to be a substantial deviation requiring further development of regional impact review, statutory conditions are specified for this review. When an amendment to a development order is issued, the development order must be consistent with the statutory requirements applicable to the original development order and is subject to appeal provisions in s. 380.07, F.S.[19] Relevant Rule: Chapter 9J-2.025, F.A.C.

Optional Agreements, Alternatives, and Requests for Clarification

The procedures encompassed in this section are, for the most part, optional for a

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[18] The time period for buildout and project phases was extended 2 years in 1992 legislation and will remain effective through December 31, 1994.

[19] The statutes specify that the state land planning agency and the regional planning agency are not required to participate at the local government hearing in order to appeal a local government development order that is amended to accommodate a substantial deviation that has been determined to be so by the local government or the developer.

developer.[20] The objective or benefit of each alternative or agreement for the developer will vary, but generally these alternatives attempt to clarify whether a development is a development of regional impact, ensure greater coordination in the process, or allow greater flexibility in the phasing of a development. Here, the effectiveness of each alternative is not evaluated and the frequency with which each alternative is initiated is not specified. Each alternative is only described briefly in accordance with the statutes.

Binding Letter(s. 380.06(4), F.S.)- A developer may request a binding letter from the state land planning agency for the purpose of a determination as to whether:

> 1) the development must undergo a DRI review under the guidelines and standards;
> 2) rights have vested pursuant to s. 380.06(20); or
> 3) a proposed substantial change to a development of regional impact concerning which rights have previously vested pursuant to s. 380.06(20) would divest such rights.

The state land planning agency or the local government within which jurisdiction the proposed development is located may require a developer to obtain a binding letter, if the development is: 1) in the presumptive bands of the percentage thresholds or 20% above a numerical threshold or 2) in the presumptive thresholds and 20% below the numerical threshold and the local government or state land planning agency is uncertain if the development will have a substantial effect on the health, safety, or welfare of citizens in more than one county. Relevant Rule: Chapter 9J-2.016, F.A.C.

Preliminary Development Agreements (s. 380.06(8), F.S.)- A developer may enter into a written preliminary agreement with the state land planning agency for the purpose of allowing the developer to proceed with a portion of the development to proceed prior to the issuance of the development order.[21] Such agreements are conditioned on the acknowledgement by the state land planning agency that the lands are suitable for development and that there is adequate public infrastructure to accommodate the development permitted in the agreement. In addition, the developer must "demonstrate that the preliminary development will not result in material adverse impacts to existing resources or existing or planned facilities." The developer must comply with the preapplication conference requirements within 45 days after the agreement is executed and must file an application for development approval for the entire development within three months of the execution of the agreement. Relevant Rule: Chapter 9J-2.0185, F.A.C.

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[20] One exception is the binding letter which may be requested by a developer or mandated by the state land planning agency, or the local government with jurisdiction over the land proposed for development. An adjoining local government may petition the state land planning agency to require a developer to obtain a binding letter.

[21] The thresholds allowed for development under this alternative are set in the statutes; no more than 80% of any application threshold or less than 120% of any application threshold if the development is part of a proposed downtown development of regional impact or an areawide development of regional impact.

Conceptual Agency Review (s. 380.06(9), F.S.)- Labelled a procedure to "facilitate the planning and preparation of permit applications for projects that undergo developments of regional impact review, and in order to coordinate the information required to issue such permits," a conceptual agency review may be requested by a developer. This process is a general review of certain aspects of a proposed development to consider whether those aspects comply with each agency's statutes and rules. This form of review is a licensing action subject to Chapter 120 with approval or denial constituting final agency action. Statutory provisions referring to this review require state agencies to cooperate with the state land planning agency by providing their information and application requirements and by attempts to standardize review procedures, data requirements, and data collection methodologies among all of the state agencies involved in a conceptual review. Conceptual agency review approval is valid for up to 10 years unless otherwise provided by agency review. Relevant Rule: Chapter 9J-2.021, F.A.C.

Areawide Development of Regional Impact (s.380.06(25), F.S.) - An areawide development of regional impact defines a planning area that is generally large in scope and where an overall development plan is found to be in the public interest. A developer must first file a petition, requesting authorization to submit the application. The petition, submitted to the local government as well as the regional and state planning agencies, is evaluated according to specified criteria. Within 60 days of receiving the petition, the local government must schedule a public hearing to consider, among other things, whether a proposed developer should be authorized to submit an areawide DRI. The local government then issues an order addressing whether the developer may submit an application for development approval for the proposed areawide DRI. The actual review of an areawide DRI generally follows the procedural steps of a regular DRI.

After the review and approval of an areawide development of regional impact, "all developments within the defined planning area shall conform to the approved areawide development plan and development order." Similar to the downtown DRIs, changes to an areawide DRI development order will be subject to the requirements associated with a substantial deviation, with the exception that percentages and numerical criteria shall be double those listed in paragraph 380.06(19)(b).

The local government with jurisdiction may initiate an areawide DRI, and the areawide DRI planning area may include multiple landowners. Developers other than local governments must show that property owners do not object to the proposed areawide DRI. If property owners withdraw their consent to the areawide DRI, its plan, development order, and exemption from the DRI review no longer apply to that landowner's property. In general, when a local government is the developer of an areawide DRI, it does not need to show landowner consent to the plan, and landowners may not withdraw their consent, but are still subject to the plan. Relevant Rule: Chapter 9J-3, F.A.C.

Florida Quality Development (s. 380.061, F.S.)- This program ensures an expeditious and timely review by the agencies with jurisdiction over projects that have been "thoughtfully planned to take into consideration protection of Florida's amenities, the cost to the local government of providing services to a growing community, and the high quality of life Floridians desire". All Florida quality developments must be above 80% of the

numerical thresholds in the numerical guidelines and standards for a DRI. A developer must protect "in perpetuity" several types of natural attributes, such as, wetlands and water bodies,[22] active beach or primary and secondary dunes, archaeological sites, areas known to contain or be important for significant animal species designated as endangered or threatened and plant species designated as endangered. The procedures required for a Florida quality development begin with the developer contacting the state land planning agency. The state land planning agency arranges the preapplication conference and issues, with the approval of the local government, the development order. The regional planning agency, local government and other state and regional agencies are involved in the review of the development. A developer may withdraw and convert to a DRI and may appeal to gain designation as a Florida Quality Development. Relevant Rule: Chapter 9J-28, F.A.C.

Comprehensive Application: Master Development Order (s. 380.06(21), F.S.) - If a development includes two or more developments of regional impact or a proposed development is planned over an extended period of time, a developer may file a comprehensive development of regional impact application. If a proposed development is planned over an extended period of time, a developer may file an application for master development approval and agree to present subsequent increments of the development for preconstruction review and approval. The agreement is entered into by the developer, appropriate regional planning agency, and the appropriate local government having jurisdiction. Prior to the adoption of a master development order, the developer, landowner, the regional planning agency, and the appropriate local government having jurisdiction must ensure that the order adequately addresses regional impacts and specifies information requirements for subsequent incremental application. Issues that may result in the denial of an incremental application must be identified. Relevant Rule: Chapter 9J-2.028, F.A.C.

Downtown Development Authority (s. 380.06(22), F.S.) - A downtown development authority, as a developer, may submit a development of regional impact application for a portion or all of the land in the downtown development authority's jurisdiction. For this type of DRI, information by land use category must be provided in addition to the information required for a DRI application. Development changes within the downtown development plan and associated development order resulting in an excess in the amount of development approved for a particular activity, must be subjected to the substantial deviation provisions for a DRI(subsection (19)), with the exception that all percentages and numerical criteria shall be double those listed in paragraph (19)(b) of this section. Relevant Rule: Chapter 9J-2.029, F.A.C.

Option to be Bound by Rules Adopted Pursuant to Chapters 403 and 373, Florida Statutes (section 380.06(6)(c), F.S.) - Prior to the issuance of a final development order, a developer may elect to be bound by the rules in effect pursuant to Chapters 403 and 373,

[22] Under the jurisdiction of the Florida Department of Environmental Regulation, pursuant to s. 403.8171, F.S.

F.S., when a development order is issued. Unless conditions specified in the statute occur,[23] the rules will apply to all applications for permits necessary for and consistent with the development authorized in the development order.

What have been the major amendments to the DRI review process since 1972?

The development of regional impact provisions were enacted in 1972 as part of the Environmental Land and Water Management Act (Chapter Law 72-317, Laws of Florida). In that initial form, the development of regional impact statute directed the Administration Commission to adopt, by rules, guidelines and standards to be used in determining whether particular developments shall be presumed to be of regional impact. Criteria to be considered in the development of the guidelines and standards were specified. Regional Planning Councils were authorized to recommend developments for designation as DRIs to the state land planning agency and to prepare regional impact reports relevant to each DRI. Criteria were listed for this report. A public hearing was required along with appropriate noticing. Local governments were assigned responsibility for issuance of the final development order approving the DRI.
The major general law amendments to the development of regional impact review since 1972 are listed below.

Chapter 74-326, Laws of Florida, Section 2

* Authorizes the state planning agency to determine whether a developer proposed development is vested; provides that binding letters of interpretation shall bind all state, regional and local agencies as well as the developer;

* Clarifies vesting provisions for developers who obtained vested rights through local government action between August 1, 1967 and July 1, 1973;

* Prohibits a local government from issuing a notice of public hearing until the appropriate regional planning agency provides written notice that the appropriate information has been submitted; provides for submittal of information in the event the regional planning agency determines that the application is insufficient;

* Requires local governments to render a decision on a DRI application within 30 days of the public hearing on the issue;

* Authorizes joint public hearings for DRIs located in more than one jurisdiction;

* Expands from thirty to fifty the number of days the regional planning agency has to submit a report to a local government on the regional impact of a proposed development;

* Allows a developer to file a comprehensive DRI application if a development project includes two or more DRIs.

Chapter 75-167, Laws of Florida, Section 5

* Exempts proposed hospitals with a designed capacity of less than 100 beds from the DRI requirements.

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[23]These conditions refer to a rule adopted later being necessary for the public, health, safety, or welfare, federal mandates, or a statutory program that mandates a modification of the rule.

Chapter 76-69, Laws of Florida, Section 1

* Requires that the Administration Commission, when adopting guidelines and standards, consider the extent to which developments would create an additional demand for energy; requires that the regional planning agencies report and recommendations consider the extent to which a development would create an additional demand for energy.

Chapter 77-215, Laws of Florida, Section 2

* Clarifies that rule modifications do not pertain to vested rights of developers; establishes guidelines for state planning agency review of vested status;

* Establishes what proposed changes constitute a substantial deviation from approved DRIs;

* Establishes master development approval application procedures and guidelines.

Chapter 79-400, Laws of Florida, Section 148

* Clarifies further the vested rights provisions.

Chapter 80-313, Laws of Florida, Section 3

* Provides that Administration Commission revisions to current DRI standards and guidelines must be approved by joint resolution of the Legislature;

* Amends guidelines for processing a binding letter of interpretation on DRIs;

* Establishes guidelines for a preapplication conference between developers and regional planning agencies, establishes an optional coordinated review process including other state or regional licensing agencies, and enables the developer to request binding agreements with those agencies on specified issues;

* Amends a number of provisions pertaining to the DRI review process;

* Establishes guidelines for local review of DRIs and contents of development orders;

* Allows regional planning agencies to comment--but not to appeal--on issues affecting only the local government with jurisdiction;

* Defines substantial deviation;

* Authorizes downtown DRI process, sets guidelines and conditions;

* Requires regional planning agencies to prepare and submit to the state land planning agency for its approval a list of regional issues to be used in DRI review.

Chapter 83-222, Laws of Florida, Section 22

* Exempts proposed electrical transmission lines or electrical power plants from the DRI requirements, except any steam or solar electrical generating facility of less than 50 megawatts in capacity attached to a DRI.

Chapter 83-308, Laws of Florida, Section 4

* Requires regional planning agencies to review additional requested information within 30 days of receipt; provides, with exceptions, that a DRI application is withdrawn if additional requested information is not provided within 120 days;

* Exempts, under certain circumstances, additions to a sports facility complex from the DRI process.

Chapter 84-331, Laws of Florida, Section 1

* Authorizes certain developers, including qualified governmental agencies, to submit an areawide development plan for review; establishes guidelines for the state planning agency to develop rules pertaining to submittal and approval of areawide development plans.

Chapter 85-55, Laws of Florida, Sections 43 - 47 (substantial revisions and additions)

* Introduces the application of percentage "banded" thresholds for the "statewide" guidelines and standards in determinations of DRI;

* Authorizes a petitioning process to allow variations in statewide guidelines and thresholds; authority rests with the Administration Commission;

* Introduces authorization for DCA and local governments to require a developer to obtain a binding letter;

* Authorizes state or regional entities to inquire whether a proposed project is undergoing or will be required to undergo DRI review and specified time requirements related to permits;

* Preliminary development agreements authorized;

* Creates the conceptual agency review process, which replaces the coordinated review process;

* Provisions added addressing developer contributions of land; development order exactions language added to require developer to pay a proportionate share of funds, land, or public facilities necessary to accommodate any impacts having a rational nexus to the proposed development; language added addressing credits against impact fees;

* Substantial deviation section rewritten;

* Introduces notice requirements for anyone claiming vested rights under s. 380.06(20)(a), F.S. and expiration dates for vested rights;

* Criteria for areawide development plan added;

* Establishes two alternatives to the DRI process--Florida Quality Developments and local certification;

* Creates s. 380.0651, F.S. - modifying statewide guidelines and standards for developments required to undergo DRI review.

Chapter 86-191, Laws of Florida, Section 15

* Requires that preliminary development agreements be properly noticed (in accordance with s. 28.222, F.S.) with the clerk of circuit court in each county in which the land covered by the terms of the agreement is located;

* Authorizes developers of Florida Quality Developments to use preliminary development agreements;

* Exempts developments in areas of critical state concern from the DRI process if such developments had pending applications and had been noticed or agendaed by local governments in September, 1985;

* Expands the criteria for determining what constitutes a substantial deviation from an approved DRI.

Chapter 88-164, Laws of Florida, Section 1

* Substantial deviation: clarification of terms, qualifications, further refining what constitutes a substantial deviation;

* Provides that vested rights may expire if development of the vested plan has not begun by a specified date;

* Provides noticing guidelines for areawide DRIs when the developer is a local government and modifies the Florida Quality Development requirements;

* Sets out criteria for aggregation of separate developments.

Chapter 89-375, Laws of Florida, Section 1, and
Chapter 89-536, Laws of Florida, Section 1

* Amends one of the conditions of preliminary development agreements; establishes conditions under which a developer may abandon a preliminary development agreement;

* Expands the criteria local governments consider when reviewing DRIs outside of areas of critical state concern;

* Deletes two criteria, clarifies one, and adds 3 criteria for determining whether a proposed change to a DRI constitutes a substantial deviation;

* Authorizes and sets guidelines for regional planning agencies to collect fees for reviewing DRIs and Florida Quality Development reviews;

* Requires the state land planning agency to develop rules to establish a process for local governments to follow when a developer proposes to abandon its DRI.

Chapter 90-331, Laws of Florida, Section 52

* Exempts certain sports facility expansions from the DRI process.

Chapter 91-305, Laws of Florida, Section 20,
Chapter 91-192, Laws of Florida, Section 20, and
Chapter 91-309, Laws of Florida, Section 1

* Exempts certain sports facility expansions from the DRI process.

Chapter 92-129, Laws of Florida, Section 15

* Extends buildout date of project and phases 2 years in substantial deviation subsection (effective through December 31, 1994).

What is required in order for a local government to be certified to conduct a DRI review?[24]

Any local government may petition the Administration Commission and request certification to review developments of regional impact within its jurisdiction. The Administration Commission's rules define certification as authorizing a local government, within its jurisdiction, to review developments without the DRI provisions of s. 380.06, F.S. or to review DRIs in place of the regional review requirements of the DRI statute.[25] The Department of Community Affairs must submit a report and recommendations to the Administration Commission, and the Commission determines if the local government meets the criteria for certification.[26] Basically, these criteria address whether the local government has "adopted and effectively implemented" a local comprehensive plan and development regulations that meet the requirements of the Local Government Comprehensive Planning and Land Development Regulation Act,[27] including its consistency and concurrency provisions; has in place effective mechanisms for resolving greater-than-local impacts of developments and incompatibilities among local comprehensive plans; provides for public participation; and has the necessary review procedures, staff and financial resources as well as a record of effectively monitoring and enforcing development orders and permits.

The DRI process no longer applies within the jurisdiction of a certified local government. The local government's development orders can, however, be appealed to the Florida Land and Water Adjudicatory Commission, but the local findings of fact and conclusions of law are presumed to be correct. The grounds for appeal are specified in the statute and include: inconsistency with the local plan, local development regulations, state plan or state land development plan; inconsistency with a standard or policy used in reviewing DRIs from the comprehensive regional policy plan; or failing to meet the standards of the local capital improvements plan, including the concurrency standard.

The Administration Commission can revoke certification, following an administrative hearing and a finding that one or more of the criteria for certification are no longer being met. If certification is revoked, any DRIs in that local government are once again reviewed by the appropriate regional planning council. Prospective developments under DRI review when certification is revoked may choose to have the review completed by the local government.[28] Similarly, when certification is first initiated, developments undergoing DRI review may opt to have their review continue under the original process.[29]

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[24] According to several local and state public officials, there have been very few concerted attempts to request certification. One local government which pursued certification but ultimately decided against it was Sarasota County.

[25] Rule 28-10.002,(1), Florida Administrative Code.

[26] These criteria are found in s. 380.065, F.S.

[27] Part II, Chapter 163, Florida Statutes.

[28] Rule 28-10.007(7), Florida Administrative Code.

[29] Rule 28-10.005(7), Florida Administrative Code.

What is the relevant DRI case law?

This review of DRI case law is a brief sketch of some major points that the courts have addressed. This section concentrates on actual case law. Many issues are settled before appeals are brought. In other cases, declaratory statements from the Department, issued pursuant to sec. 120.565, F.S., provide the agency's opinion of whether statutory provisions or rules apply to a petitioner's special set of circumstances. This discussion includes an overview of some of the Department's declaratory statements as well as the actual case law addressing vested rights, due to the attention paid to that issue. In actual appeals, the decisions of administrative hearing officers and of the Florida Land and Water Adjudicatory Commission (the Commission) are a vital part of the process and of the evolution of DRI policy. While some administrative hearings and Commission actions are touched on in this brief review, the focus is on actual case law. Since the DRI process has been in place for nearly two decades, many issues initially resolved by the courts have been further clarified by statutory changes, and those issues of more historical interest are not addressed here. This review only includes cases that continue to inform the interpretation and administration of the DRI law as it now stands.

Much of the case law regarding DRIs concerns three broad issues: standing, vested rights, and the nature and scope of the appeals process. Of these issues, standing is the most frequently litigated. Standing to appeal a development order is limited. The courts have repeatedly held that standing is restricted to the parties actually named in the statute: the developer, the landowner, the regional planning council and the Department of Community Affairs.[30] There have been many failed attempts to broaden standing. The courts have denied standing to adjacent property owners; landowners whose property was developed before the surrounding area gained DRI status; counties wishing to appeal a municipality's development order; and one county seeking to appeal a neighboring county's development order.[31] Standing has, however, been granted to a landowner's heirs with a reversionary interest in property.[32]

While the ability to initiate the challenge is limited, the Florida Land and Water Adjudicatory Commission's procedural rules allow "materially affected parties" to intervene if one of the four parties with standing has already brought an appeal. The motions to intervene may request the Commission to consider issues that were not raised in the record below.[33] The court has found this rule to be valid on its face, and held that this provision

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[30] Section 380.07(2), F.S.

[31] These cases include, respectively, Caloosa Property Owners Ass'n v. Palm Beach County Bd. of County Comm'rs, 429 So. 2d 1260 (Fla. 1st DCA 1983); Lodono v. City of Alachua, 438 So. 2d 91 (Fla. 1st DCA 1983); Sarasota County v. General Development Corp., 325 So. 2d 45, 47 (Fla. 2d DCA 1978); and Sarasota v. Beker Phosphate Corp., 322 So. 2d 655, 658 (Fla. 1st DCA 1975).

[32] In White v. Metropolitan Dade County 563 So. 2d 117 (Fla. App. 3 Dist. 1990), the court ruled, among other things, that a reverter clause in the vehicle used to transfer the property in question to the county gave the heirs standing to protect their interests.

[33] Rule 42-2.006, Florida Administrative Code.

was not, in effect, granting standing to intervenors.[34] Thus, standing to appeal a development order is restricted, but standing to intervene in an appeal is more broadly granted.

The courts have addressed the standing issue most frequently, but the Department, through its declaratory statements, has most frequently addressed the issue of vested rights. At least two major aspects of the vesting issue will be touched on here, whether a development is vested from the DRI requirements and whether a DRI is vested from the requirements of the local comprehensive plan. Referring to the first aspect, the court has held that simply zoning or rezoning the property before the effective date of chapter 380 is not enough to vest a development and exempt it from DRI review.[35] A recent decision, however, conflicts with that longstanding interpretation as revised.[36]

Without judicial interpretation of recent vested rights provisions, the Department's statements, particularly with regard to whether DRI development rights are vested from the requirements of local comprehensive plans that were revised in light of the Local Government Comprehensive Planning and Land Development Regulation Act, are the most authoritative pronouncements available on the issue. The Department's view is that having been issued a DRI development order vests certain rights that are not affected by the local comprehensive plan.[37]

There are, however, limits and exceptions on vested rights for approved DRIs against local comprehensive plans. Basically, if a DRI development order is amended, regardless of the magnitude of that change, after a local plan is adopted, the amendments must be consistent with the local comprehensive plan, including its consistency and concurrency requirements[38]. The Department has also stated that a development order condition may, in effect, require a DRI to be consistent with the local plan and to meet concurrency requirements[39]. Finally, DCA has taken the position that a project which was exempt from DRI review because it pre-dated the DRI law could be required to be consistent with the local plan and to meet its concurrency requirements. Here, the Department reasoned: "The clear equitable intent of the DRI provision [in s. 163.3167(8), F.S.] is to exempt

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[34] Fairfield Com. v. Land & Water Adj. Comm'n 522 So. 2d 1012 (Fla. App. 1 Dist. 1988).

[35] See, for example, City of Ft. Lauderdale v. DVCA, Fla.App. 424 So.2d 102

[36] Florida Department of Community Affairs v. Ridgewood Properties, Inc., DCA Case No. 87 Nov-1, DOAH Case No. 87-1443, on remand from the Florida Supreme Court, Ridgewood Properties, Inc. v. Department of Community Affairs, 562 So.2d 322 (Fla. 1990), reversed Ridgewood Properties, Inc. v. DCA, 17 FLW D809.

[37] See both General Development Corp. v. Florida Department of Community Affairs, 11 Fla. Admin. Law Rep. 1032 (1988) and Gulfstream Dev. Corp. v. Florida Department of Community Affairs, 11 Fla. Admin. Law Rep. 1018, clarified 11 Fla. Admin. Law Rep. 1047 (1988).

[38] See both Gulfstream Development Corp., cited above, and Huckleberry Land Joint Venture v. DCA, 11 Fla. Admin. Law Rep. 5706 (Oct. 4, 1989).

[39] American Newland Associates v. DCA, 11 Fla. Admin. Law Rep. 5205 (Sept. 13, 1989).

developments that have already been the subject of intense intergovernmental review from further requirements under a comprehensive plan which was not in effect at the time of DRI approval."[40]

Finally, the courts have ruled on the nature and scope of the DRI appeals process, particularly with regard to the actions of the Land and Water Adjudicatory Commission. The courts have held that the appeal to the Commission is an appeal in the general sense of requesting consideration by a higher authority, rather than a strictly construed, judicial proceeding.[41] The courts have also held that the statutes anticipate that the Commission's hearings may be de novo evidentiary hearings.[42] In reviewing DRIs, the Commission is to focus on whether the proposed development is in conformance with the standards set out in the statute. In its review, the Commission must balance the factors laid out by statute. Basically, these factors, the same that must be addressed by the Regional Planning Council in its report, consider the proposed development's impacts on the environment, natural and historic resources; the economy; public facilities, including transportation; housing; and other factors deemed appropriate.[43] Balancing these issues is not a strict numerical exercise, and it is possible for two positive impacts to be outweighed by a single negative one.[44] The Commission may impose conditions on a development order in an attempt to mitigate adverse impacts, but any such conditions must be supported by the record [45].

How many DRI development orders have been issued in the past 5 years?

Table I displays the number of DRIs that have been approved, approved with conditions or denied during the time period July 1, 1987 through July 1, 1992 by region.[46] During the five year time period used for the preparation of Table I, there were 265 DRIs approved, approved with conditions, or denied. Of the 265 DRIs, 9 are Florida Quality Developments. During that same time period, 8 DRIs were denied and 3 of these denials were later approved with conditions. The number of DRI appeals initiated during this time period is between 63 and 68 DRI appeals. Information provided by the Department of Community Affairs identified 63 appeals while a survey of the RPCs indicated that 68

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[40] In Re: Petition for Declaratory Statement by Orlando Central Park, Inc., 12 Fla. Admin. Law Rep. 944 (Feb. 19, 1990).

[41] Transgulf Pipeline Co. v. Board of County Comm'rs, 438 So. 2d 876, 878 (Fla. 1ST DCA).

[42] Fairfield Communities v. Florida Land and Water Adjudicatory Comm'n, 522 So. 2d 1012, 1014 (Fla. 1st DCA 1988).

[43] Graham v. Estuary Properties, Inc. 399 So. 2d. (Fla.) cert. denied, 454 U.S. 1083 (1981).

[44] Estuary Properties, 399 So. 2d at 1377-78.

[45] Fox v. Treasure Coast Regional Planning Council, 442 So. 2d 221, 223-25 (Fla. 1st DCA 1983).

[46] This information was compiled with the assistance of staff from the Department of Community Affairs and the regional planning councils.

appeals were initiated during this same time period.[47] Only 11 DRI appeals (shown in Table I) were officially "on appeal" on July 1, 1992. The regions with largest number of DRIs approved or approved with conditions from 1987 through 1992 were East Central RPC with 57 DRIs and Tampa Bay RPC, with 55 DRIs.[48] North Central RPC had only 1 DRI approved from 1987 through 1992.

The information displayed in Table I does not represent all of the DRI review activity in each region of Florida. For example, Table I does not necessarily account for relatively new DRIs for which there were applications for development approval submitted but no development orders issued and DRI activity corresponding with preapplication conferences, which are requested by the developer and arranged by the regional planning agencies. Therefore, Table II is helpful in forming a more complete picture of DRI activity undertaken in each region. Stages in the DRI review process are listed with the number of DRIs at each stage (as of July 1, 1992) displayed by region. High DRI frequencies appear for Tampa Bay RPC and East Central RPC in the "Determination of Designation of Change to Development Orders as Substantial Deviation" Stage. East Central RPC also has a high number of DRIs at the review stage requiring the regional planning agency to determine the sufficiency of an application for development approval.

A final item of interest appearing in Table II is the number of DRI annual reports expected in fiscal year 1991-92 by each regional planning agency. These frequencies should represent the "total" number of DRIs that have obtained DO approval since 1980, but have not yet completed development[49]

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[47] According to the Department of Community Affairs' records, the Department initiated 71%(45) of the appeals, the RPCs initiated 13%(8) of the appeals, 4 additional DRIs were appealed by an RPC and the Department, developers initiated 11%(7) of the appeals, and 1 appeal was initiated by a local government. The information supplied by the RPCs indicate that the Department initiated 47%(32) of the appeals, the RPCs initiated 31%(21) of the appeals, 9 additional DRIs were appealed by the Department and an RPC, developers initiated 6(9%) appeals, and one appeal was initiated by a property owner. The materials supplied by the Department indicated that 41 of the 63 appeals were resolved (65%) and the information provided by the RPCs identified 51 of the 68 appeals were resolved (75%).

[48] Of these totals, 2 are on appeal in East Central RPC and 2 are on appeal in Tampa Bay RPC.

[49] The annual report became a requirement in 1980.

TABLE I
FIVE YEAR SUMMARY OF DEVELOPMENT OF
DEVELOPMENT OF REGIONAL IMPACT REVIEWS (DRIs)
BY RPC AND YEAR: FY 1987-1992
(Notes appear on the last page of the table.)

7/13/92
ACIR

REGION*	YEAR**	# OF DRIs	LAND USE+	LOCAL GOVERNMENT WITH JURISDICTION		DEVELOPMENT ORDER STATUS++			
				COUNTY	CITY	APPROVED	APPROVED W/ CONDITIONS	ON APPEAL ON JULY 1, 1992	DENIED
(1) West Florida RPC	1987	1	H(1); A(1)	1	0		1		
	1988	1	R(1); H(1); Rt(1)	1				1	
	1989	2	P(1); Rt(1)	1	1		2		
	1990	1	P(1)	1			1		
	1991	2	R(1); Rt(1); H(1); RC(1)	1	1		2		
	1992	1	A(2)		1		1		
(2) Apalachee RPC	1987	1	I(1); Rt(1); H(1)	1			1		
	1988	3	R(1); O(1); A(1)	1	2		3		
	1989	3	I(1); R(1); O(1); Rt(3); P(1)	1	2		3		
	1990	1	O(1)		1		1		
	1991	1	H(1); O(1); R(1); Rt(1)		1		1		
	1992	1	O(1); Rt(1)	1			1		
(3) North Central FL RPC	1987	0							
	1988	0							
	1989	0							
	1990	1	R(1); Rt(1)	1			1		
	1991	0							
	1992	0							
(4) Northeast FL RPC	1987	0							
	1988	9	R(4); I(4); O(6) Rt(6); H(3); M(1); HO(1)	5	4		9		
	1989	9	I(5); O(5); P(1) R(3); Rt(4)	3	6		8	1	
	1990	1	A(1); I(1); H(1)		1		1		
	1991	5	I(3); O(5); R(4); Rt(3); H(2); HO(1); RC(2)	2	3		4	1	
	1992	0							

Land Use Codes: A-Airport; H-Hotel; P-Port; R-Residential; I-Industrial; Rt-Retail; O-Office; RV-Recreational Vehicle Park; Ho-Hospital; M-Mining; Pe-Petroleum; RC-Recreation; S-Schools.

TABLE I (continued)

REGION*	YEAR**	# OF DRIs	LAND USE+	LOCAL GOVERNMENT WITH JURISDICTION		DEVELOPMENT ORDER STATUS++			
				COUNTY	CITY	APPROVED	APPROVED W/ CONDITIONS	ON APPEAL ON JULY 1, 1992	DENIED
(5) Withlacoochee RPC	1987	1	RC(1); HO(1); O(1); R(1); Rt(1)	1	0		1		
	1988	2	RC(1); R(2)	2			2		
	1989	2	RC(1); O(1); R(2); Rt(2)	1	1		1	1	
	1990	3	RC(1); R(2); Rt(2)	2	1		3		
	1991	1	RC(1); O(1); R(1); Rt(1); HO(1)	1			1		
	1992	2	R(2); Rt(2); O(1); RC(1); H(1); HO(1); I(1)	2			2		
(6)East Central FL RPC	1987	4	I(2); O(1); R(2) Rt(2); H(2); RC(1)	2	2		4		
	1988	8	O(4); Rt(6); I(3); R(7); H(3); RV(2)	5	3		8		
	1989	13	O(10); Rt(11); H(7); R(7); RC(3); P(1)	10	3		13		
	1990	19	I(2); O(8); Rt(14) R(13); H(10); RC(3) RV(3); A(2)	16	3		17	1	1 (later AWC)
	1991	13	Rt(10); H(5); O(4); I(1); R(5); A(1); P(1)	11	2		13		
	1992	2	O(1); R(2); Rt(2); H(2)	2			1	1	
(7) Central FL RPC	1987	2	R(1); Rt(1); H(1); M(1);O(1)	2			2		
	1988	3	Rt(1); M(1); RC(1); R(1)	2	1		3		
	1989	0							
	1990	6	M(1); O(2); H(1); Rt(3); R(1)	6			5		1
	1991	6	M(3); R(1); Rt(1); RV(1)	6			4		2
	1992	1	O(1); R(1)	1			1		

Land Use Codes: A-Airport; H-Hotel; P-Port; R-Residential; I-Industrial; Rt-Retail; O-Office; RV-Recreational Vehicle Park; Ho-Hospital; M-Mining; Pe-Petroleum; RC-Recreation; S-Schools.

TABLE I (continued)

REGION*	YEAR**	# OF DRIs	LAND USE+	LOCAL GOVERNMENT WITH JURISDICTION		DEVELOPMENT ORDER STATUS++			
				COUNTY	CITY	APPROVED	APPROVED W/ CONDITIONS	ON APPEAL ON JULY 1, 1992	DENIED
(8) Tampa Bay RPC	1987	9	O(8); R(4); Rt(6) H(7); I(4)	8	1		9		
	1988	9	O(6); Rt(6); H(3); M(1); I(1); P(1); R(1); Pe(1)	6	3		9		
	1989	25	O(18); Rt(18); H(8); I(8); R(12); RV(1); A(1); RC(1); HO(1); P(4); Pe(1)	19	6		23		2 (1 later AWC)
	1990	8	I(5); O(3); Rt(5); R(11); H(2); Pe(1); P(1)	5	3		7		1 (later AWC)
	1991	2	Rt(1); P(1)	1	1		2		
	1992	5	O(3); R(4); Rt(3); HO(1); I(2); S(1); Pe(1); H(1)	5			3	2	
(9) Southwest FL RPC	1987	6	R(4); Rt(3); O(1); H(1); I(1)	6			6		
	1988	8	R(4); O(5); I(3); Rt(7); H(4); R(11); RC(1)	6	2		8		
	1989	5	R(3); O(4); I(3); Rt(4); H(1)	4	1		5		
	1990	8	R(4); O(4); I(1); Rt(7); H(3); P(1); RC(1)	6	2		8		
	1991	4	I(1); O(3); Rt(4); H(1); R(1)	3	1		4		
	1992	2	O(2); R(2); Rt(2); H(1)	2				2	
(10) Treasure Coast RPC	1987	1	O(1)		1		1		
	1988	2	I(1); R(1); O(2); Rt(1); H(2)		2		2		
	1989	3	I(1); O(2); R(3); Rt(3); H(2)	1	2		3		
	1990	2	I(1); O(2); R(1); Rt(1); H(1); A(1)	2			2		
	1991	2	Rt(2); I(1); O(1); R(1); S(1)	1	1		2		
	1992	0							

Land Use Codes: A-Airport; H-Hotel; P-Port; R-Residential; I-Industrial; Rt-Retail; O-Office; RV-Recreational Vehicle Park; Ho-Hospital; M-Mining; Pe-Petroleum; RC-Recreation; S-Schools.

TABLE I (continued)

REGION*	YEAR**	# OF DRIs	LAND USE+	LOCAL GOVERNMENT WITH JURISDICTION		DEVELOPMENT ORDER STATUS++			
				COUNTY	CITY	APPROVED	APPROVED W/ CONDITIONS	ON APPEAL ON JULY 1, 1992	DENIED
(11) South FL RPC	1987	8	O(7); R(4); I(6); Rt(9); H(5); Pe(1) RC(1)	2	6		8		
	1988	10	O(7); R(4); I(4); Rt(7); H(5); RC(1); P(2)	2	8		10		
	1989	8	O(6); Rt(5); H(6) I(2); R(2); M(1)	3	5		8		
	1990	4	I(3); O(4); Rt(3); P(1); R(2); RC(1); H(2)	2	2		4		
	1991	2	O(1); P(2); Rt(1); H(1); RC(1)	1	1		2		
	1992	1	O(1); Rt(1)		1		1		
TOTAL:		**265**		**177**	**88**	**0**	**248**	**10**	**7** (3 later AWC)

Notes:

*If project is in two RPC jurisdictions it was only listed under one RPC unless information was specific enough to list both RPC jurisdictions.

**Projects which were approved between July 1, 1987 and July 1, 1992 were included based on the date that the development order was approved. If D.O. had more than one local government jurisdiction, the last approval date was used as the D.O. approval date. If D.O. was appealed and resolved - date of D.O. amendment to resolve appeal was used as D.O. date, and project information reflects the result of the appeal resolution.

+Land Use information is that which was originally approved. Changes due to substantial deviation determinations (notification of change) were not tracked. For Substantial Deviation ADAs - amounts of development only included what was added through the substantial deviation as listed. If project had conceptual approval, then total conceptual amounts were identified

++Pending applications were not listed. Applications that were withdrawn were not listed. If D.O. is currently under appeal - original approval information was used and status is listed as "Appeal."

Source:

Department of Community Affairs and Regional Planning Councils, 6/19/92.

Land Use Codes: A-Airport; H-Hotel; P-Port; R-Residential; I-Industrial; Rt-Retail; O-Office; RV-Recreational Vehicle Park; Ho-Hospital; M-Mining; Pe-Petroleum; RC-Recreation; S-Schools.

TABLE II
Number of DRIs at Different Stages of the Review Process as of July 1, 1992 and Number of Annual Reports Submitted to RPCs for Approved DRIs During FY 1991-92*
(Compiled by Florida ACIR, July 13, 1992)

		REGIONS										
DRI STAGES	TOTAL	(1) West FL RPC	(2) Apalachee RPC	(3) North Central FL RPC	(4) Northeast FL RPC	(5) Withlacoochee RPC	(6) East Central FL RPC	(7) Central FL RPC	(8) Tampa Bay RPC	(9) Southwest FL RPC	(10) Treasure Coast RPC	(11) South FL RPC
1) Completed the Application Conference	24	0	1	1	0	0	4	3	1	4	7	3
2) Application for Development Approval Submitted.	14	0	3	1	1	2	4	0	1	2	0	0
3) Sufficiency Review of Application for Development Approval.	40	0	0	0	2	4	22	3	4	0	2	3
4) Local Government Noticed Public Hearing.	15	0	0	0	1	3	9	0	0	0	1	1
5) RPC Regional Report Completed.	20	0	0	0	0	3	9	0	2	3	0	3
6) Local Government Public Hearing Completed.	26	1	0	0	1	1	11	0	3	5	2	2
7) Determination of Designation of Change to Development Order as Substantial Deviation.	73	1	0	1	4	1	29	0	26	5	6	0
8) Review of Development Change as Substantial Deviation.	17	0	1	1	1	1	5	1	2	3	1	1
9) DRI Annual Reports expected in FY 1991-92.	485	18	13	5	36	20	61	35	118	80	39	60

*Information provided by Regional Planning Councils, July, 1992.

Using the DRI information compiled at this time, summary statistics were computed for number of acres for DRIs and the number of months between the filing of the application for development approval and the issuance of the development order for the DRI. The summary statistics are displayed below by region:

Regional Planning Council(# of DRIs)	Months Between Filing and Approval (1987-1992)			Acres for DRIs (1987-1992)		
	Average	Min.	Max.	Average	Min.	Max
West Fla. RPC(8)	13.2	6	24	134.33	4.81	496
Apalachee RPC(10)	14.2	8	20	824.7	14.2	3,800
North Central RPC(1)		6		1,518.0		
Northeast RPC(24)	12.17	2	26	1,742.0	19	8,000
Withlacoochee RPC(11)	15.18	3	45	1,183.14	24.9	5,057
East Central RPC(59)	17.55	2	73	902.03	2.9	5,906
Central RPC(18)	15.39	6	81	1,428.0	108	6,859
Tampa Bay RPC(58)	16.12	4	42	924.97	1.9	4,869.6
Southwest RPC(33)	15.21	4	33	398.12	3.6	1,778
Treasure Coast RPC(10)	17.6	5	32	788.9	15.1	2,698.7
South Florida RPC(33)	12.64	4	29	275.98	4	2,450

While the variation across regions in average months between filing and approval and average acres per DRI is evident, the variation within each region indicated by the minimum and maximum amounts is also noteworthy.

What are the statutorily authorized fees in a DRI review?

In accordance with section 380.06(23), F.S., regional planning agencies are authorized to assess and collect fees to fund the direct and indirect costs of conducting a development of regional impact review. However, the fees that are authorized for a development of regional impact review may not exceed $75,000, "unless the state land planning agency, after reviewing any disputed expenses charged by the regional planning agency, determines that said expenses were reasonable and necessary for an adequate review of the impact of a project." In order to implement these statutory provisions, the Department of Community Affairs promulgated a rule that became effective November 14, 1990 (Chapter 9J-2.0252, Florida Administrative Code). The rule requires the applicant to enter into a contract with the regional planning agency which obligates the applicant to reimburse the agency for costs associated with the review of the application for development approval, an application for development approval of a substantial deviation, an application for development designation, and an application for development designation of a substantial change. The required initial deposit is $35,000 with $5,000 being nonrefundable. While the rule states that the applicant is liable for 100% of the direct and indirect costs, the regional planning agency is required to keep accurate records of the actual costs associated with the project. The records are required to be reasonably itemized, to reflect generally accepted accounting procedures and practices, and be open for inspection during regular working hours. Regional planning agencies are prohibited from collecting fees from an applicant for the purpose of funding appeals filed pursuant to s. 380.07, F.S. In addition, the rule authorizes

a regional planning agency to charge $250 for the review of each annual report submitted in accordance with subsection 380.06(18), F.S.

If the costs associated with reviewing and coordinating a development of regional impact have depleted the deposit made by the applicant so that $5,000 remains, the regional planning agency notifies the applicant that an additional deposit not to exceed the total of $75,000 is necessary. Upon completion of the review process, if the costs associated with the project exceeded the amount deposited by the applicant but are less than $75,000, the regional planning agency must bill the applicant within 90 days. Payment is required within 30 days. If the total amount required by the regional planning agency exceeds $75,000 and the expenses of the regional planning agency are disputed, the agency clerk in the Department of Community Affairs must be notified by the applicant within 15 days of the receipt of the bill. The regional planning council is given an opportunity to respond to the applicant's dispute and within 30 days of receipt of a response, the Department must render a determination on the disputed expenses.

Prior to promulgation of the 1990 fee rule, each regional planning council promulgated its own fee rule. Typically, an initial deposit was required before the preapplication conference. Minimum and maximum fees were often set with actual fees based on size of the development relative to the statutory thresholds. In some regions, fees were set for types of DRIs, such as areawide and downtown DRIs.

What statutory provisions are applicable to the appeal of actions during the DRI review process?[50]

Before discussing detailed statutory references to appeals of actions taken during the DRI process, more general appeal powers are covered. Section 380.11, F.S. contains two such powers. One is the power of the Department of Community Affairs to "initiate an administrative proceeding ...to prevent, abate, or control the conditions or activity creating the violation" of provisions in Part I of Chapter 380, a rule or a development order issued thereunder. In addition, section 380.11, F.S. authorizes the Department of Community Affairs, all state attorneys, and all counties and municipalities to bring an action for injunctive relief against any person or developer found to be in violation of Chapter 380, Florida Statutes, or any rules, regulations or orders issued thereunder.

More detailed statutory provisions relevant to appeals resulting from actions taken during the review of developments of regional impact rest primarily in section 380.07, F.S. and refer to appeals of development orders for developments of regional impact. In accordance with section 380.07, F.S., a development order issued by a local government for a development of regional impact may be appealed by filing a notice of appeal, within 45 days of the rendering of the development order, to the Florida Land and Water Adjudicatory Commission. The governmental entities or parties authorized to appeal a development order are the owner, developer, and appropriate regional planning agency by

[50] The response in this section of the report does not represent a comprehensive or exhaustive treatment of statutory provisions relevant to appeals of development of regional impact review decisions.

vote at a regularly scheduled meeting, and the state land planning agency. The appellant is required to furnish a copy of the notice of appeal to the opposing party and to the local government which issued the order. "The filing of the notice of appeal shall stay the effectiveness of the order and shall stay any judicial proceedings in relation to the development order, until after the completion of the appeal process." The Commission is required to hold a hearing, pursuant to the provisions of Chapter 120, prior to issuing an order. The Commission's order shall be "granting or denying permission to develop pursuant to the standards of this chapter(Chapter 380, F.S.) and may attach conditions and restrictions to its decisions."

In cases in which an appeal includes issues within the "scope of a permitting program authorized by chapter 161, chapter 373, or chapter 403, and for which a permit or conceptual review approval has been obtained prior to the issuance of a development order," the issue shall be identified in the notice of appeal. Such an appeal proceeds after the Commission "determines by majority vote at a regularly scheduled commission meeting that statewide or regional interests may be adversely affected by the development." This determination is statutorily affected by a required "rebuttable presumption that statewide and regional interests relating to issues within the scope of the permitting programs for which a permit or conceptual approval has been obtained are not adversely affected."

Noteworthy provisions relevant to appeals of development of regional impact review actions in section 380.06, F.S. refer to clarifications in or limitations on appeal authority. One example of a limitation appears in subsection 380.06(12), F.S. This provision refers to regional planning agencies and states in a list of criteria required as considerations in preparation of a regional report that the agencies "may also review and comment upon issues which affect only the local governmental entity with jurisdiction pursuant to this section; however, such issues shall not be grounds for or be included as issues in a regional planning agency appeal of a development order under s. 380.07". Another example of limitations is applicable to the designation of an amendment to a development order as a substantial deviation. These limitations prohibit the appeal of the local government's designation decision by the state land planning agency or the regional planning agency if they did not participate at the appropriate local hearing unless the change is subject to a substantial deviation criterion in sub-subparagraph (e)5.c. In addition, the state land planning agency and the regional planning agency may not appeal "a change to a development order made pursuant to subparagraph (e)2. for developments of regional impact approved after January 1, 1980, unless the change would result in a significant impact to a regionally significant archaeological, historical, or natural resource not previously identified in the original development of regional impact review." Statutory provisions also referring to substantial deviations clarify that amendments to development orders that have been designated substantial deviations may be appealed in accordance with section 380.07, F.S. There is no limitation placed on participation in a local government public hearing for this appeal authority.

An additional example of statutory provisions that are applicable in the appeals of development of regional impact actions clarifies who may appeal a decision. For example, a petitioner, owner of property within the defined planning area, the appropriate regional planning agency, or the state land planning agency may appeal a local government decision

when a development is an areawide development of regional impact.

In statutory provisions relevant to abandonment, the statutes authorize any decision by a local government concerning abandonment of a development or regional impact to be subject to appeal pursuant to section 380.07, F.S.

A final example of statutory appeal provisions relevant to developments of regional impact refer to Florida Quality Developments. These statutes allow a developer to appeal a decision to not designate a development as a Florida Quality Development to the Quality Developments Review Board.

What is the relationship between the Local Government Comprehensive Planning and Land Development Regulation Act and the Review of Developments of Regional Impact?

Developments of regional impact proposed or approved after the enactment of the Local Government Comprehensive Planning and Land Development Regulation Act (Part II, Chapter 163, Florida Statutes) or "Growth Management Act" must comply with the requirements in the Growth Management Act, including consistency and concurrency requirements. This understanding is captured in the intent language contained in the Act, particularly the language in section 163.3161(5), F.S. which clarifies that "adopted comprehensive plans shall have the legal status set out in this act and that no public or private development shall be permitted except in conformity with comprehensive plans or elements and portions thereof, prepared and adopted in conformity with this act."

One major exception to the above understanding resides in section 163.3167(8), F.S., which states, "Nothing in this act shall limit or modify the rights of any person to complete any development that has been authorized as a development of regional impact pursuant to chapter 380 or who has been issued a final local development order and development has commenced and is continuing in good faith." This provision is key to ensuring the vested rights of most DRIs that were approved prior to the adoption of local comprehensive plans that were revised to meet the requirements of the Growth Management Act. In an earlier section of this report-in-brief addressing relevant case law, the Department of Community Affairs has interpreted this vesting provision as meaning that a development of regional impact that has been approved by a local government development order does not have to meet new standards in a revised local comprehensive plan brought into compliance with the 1985 Growth Management Act. However, there have been exceptions to this interpretation articulated by the Department. The most notable exception is when a DRI is amended after a local plan is adopted. In these instances, consistency and concurrency requirements in the Growth Management Act might apply to the DRI. Certain conditions in a DRI development order might also require a DRI to meet consistency and concurrency requirements. A final exception to vesting communicated by the Department refers to large scale developments that pre-date the DRI law.

At this time, the procedures required in the review of developments of regional impact as specified in section 380.06, F.S. are not fully integrated with the required

procedures contained in the "Growth Management Act" (Part II, Chapter 163, Florida Statutes). One relevant statutory provision in the Growth Management Act encourages coordination between the review of developments of regional impact and local government comprehensive plan amendments. The relevant provision, s. 163.3187(1)(b), F.S. states,

> Any local government comprehensive plan amendments directly related to a proposed development of regional impact, including changes which have been determined to be substantial deviations and including Florida Quality Developments pursuant to s. 380.061, may be initiated by a local planning agency and considered by the local governing body at the same time as the application for development approval using the procedures provided for local plan amendment in this section and applicable local ordinances, without regard to statutory or local ordinance limits on the frequency of consideration of amendments to the local comprehensive plan. Nothing in this subsection shall be deemed to require favorable consideration of a plan amendment solely because it is related to a development of regional impact.

Rules promulgated by the Department of Community Affairs also address this coordination by actually requiring that "Any amendment to a local government comprehensive plan required for any portion of a DRI shall be approved prior to, or concurrently with, the issuance of the DRI development order."[51] However, other than the requirement that the adopted local comprehensive plan amendment must precede or be concurrent with the issuance of a related DRI development order, statutorily required integration between the two processes is limited. One could argue this was and remains the intent. The separation between the two procedures also supports the understanding that they focus on different development impacts. The DRI review emphasizes the "regional impacts" and, according to some, the local comprehensive planning process concentrates primarily on impacts within a single jurisdiction.

A final point that merits attention here is that in accordance with the statutes, regional planning councils and their approved comprehensive regional policy plans have a role in the coordination between the review of developments of regional impact and local government comprehensive planning. This connection is "indirect" in that the local government comprehensive plans are required to be consistent with and further the CRPP[52] while the CRPP is used as the basis for review of the developments of regional impact by the RPC.[53] These two requirements do not necessarily ensure consistency between DRIs and local government comprehensive plans or the integration of the procedures, but the application of the CRPP is another mechanism for facilitating a minimal level of coordination.

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[51] Chapter 9J-2.019, F.A.C.

[52] Section 163.3177(10)(a), F.S.

[53] Section 186.507, F.S.